

## **EXHIBIT C**

Parker, Lisa

June 6, 2007

Baltimore, MD

1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:  
PRICE LITIGATION : 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO :  
U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris  
the Florida Keys, Inc. v. :  
Abbott Laboratories, Inc., : Chief Magistrate  
No. 06-CV-11337-PBS : Judge Marianne B.  
-----x Bowler

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

-----x  
STATE OF ALABAMA, :  
Plaintiff, :  
vs. : Case No.: CV-05-219  
ABBOTT LABORATORIES, INC., : Judge Charles Price  
et al., :  
Defendants.:  
-----x

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<p style="text-align: right;">2</p> <p>1 IN THE COURT OF THE SECOND JUDICIAL CIRCUIT</p> <p>2 IN AND FOR LEON COUNTY, FLORIDA</p> <p>3</p> <p>4 THE STATE OF FLORIDA</p> <p>5 ex rel.</p> <p>6 ----- x</p> <p>7 VEN-A-CARE OF THE FLORIDA :</p> <p>8 KEYS, INC., a Florida :</p> <p>9 Corporation, by and through its :</p> <p>10 principal officers and directors, :</p> <p>11 ZACHARY T. BENTLEY and :</p> <p>12 T. MARK JONES, :</p> <p>13 Plaintiffs, :</p> <p>14 vs. : Civil Action</p> <p>15 MYLAN LABORATORIES INC.; MYLAN : No.: 98-3032G</p> <p>16 PHARMACEUTICALS INC.; NOVOPHARM : Judge: William</p> <p>17 LTD., SCHEIN PHARMACEUTICAL, INC.; : L. Gary</p> <p>18 TEVA PHARMACEUTICAL INDUSTRIES :</p> <p>19 LTD., TEVA PHARMACEUTICAL USA; :</p> <p>20 and WATSON PHARMACEUTICALS, INC., :</p> <p>21 Defendants, :</p> <p>22 ----- x</p>	<p style="text-align: right;">4</p> <p>1 Videotaped Deposition of LISA PARKER, a</p> <p>2 witness herein, called for examination by counsel</p> <p>3 for Abbott Laboratories in the above-entitled</p> <p>4 matter, pursuant to notice, the witness being duly</p> <p>5 sworn by Robert M. Jakupciak, a Notary Public in</p> <p>6 and for the District of Columbia, taken at the</p> <p>7 offices of Center for Medicare &amp; Medicaid Services,</p> <p>8 7111 Security Blvd., Baltimore, Maryland, 21244, at</p> <p>9 2:20 p.m., on June 6, 2007, and the proceedings</p> <p>10 being taken down by Stenotype by Robert M.</p> <p>11 Jakupciak, RPR.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">3</p> <p>1 IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS</p> <p>2 STATE OF MISSOURI</p> <p>3 ----- x</p> <p>4 STATE OF MISSOURI, ex rel., :</p> <p>5 JEREMIAH W. (JAY) NIXON, :</p> <p>6 Attorney General, :</p> <p>7 and :</p> <p>8 MISSOURI DEPARTMENT OF SOCIAL :</p> <p>9 SERVICES, DIVISION OF MEDICAL : Case No.:</p> <p>10 SERVICES, : 054-1216</p> <p>11 Plaintiffs, : Division No. 31</p> <p>12 vs. :</p> <p>13 DEY INC., DEY, L.P., MERCK KGaA, :</p> <p>14 EMD, INC., WARRICK :</p> <p>15 PHARMACEUTICALS CORPORATION, :</p> <p>16 SCHERING-PLOUGH CORPORATION, and :</p> <p>17 SCHERING CORPORATION, :</p> <p>18 Defendants, :</p> <p>19 ----- x</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">5</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the United States of America:</p> <p>4</p> <p>5 ANA MARIA MARTINEZ, ESQUIRE</p> <p>6 U.S. Department of Justice</p> <p>7 99 N.E. 4th Street</p> <p>8 Miami, Florida 33132</p> <p>9 (305) 961-9431</p> <p>10</p> <p>11 On behalf of the U.S. Department of</p> <p>12 Health and Human Services:</p> <p>13</p> <p>14 TROY A. BARSKY, ESQUIRE</p> <p>15 U.S. Department of Health and</p> <p>16 Human Services</p> <p>17 C2-05-23</p> <p>18 7500 Security Blvd.</p> <p>19 Baltimore, Maryland 21244-1850</p> <p>20 (410) 786-8873</p> <p>21</p> <p>22 (CONTINUED)</p>

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<p>6</p> <p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 On behalf of Abbott Laboratories:</p> <p>4</p> <p>5 LOUIS P. GABEL, ESQUIRE</p> <p>6 Jones Day</p> <p>7 51 Louisiana Avenue, N.W.</p> <p>8 Washington, D.C. 20001</p> <p>9 (202) 879-5411</p> <p>10</p> <p>11 (The following attorneys present by phone.)</p> <p>12</p> <p>13 On behalf of Dey Companies and Mylan:</p> <p>14</p> <p>15 CLIFFORD KATZ, ESQUIRE</p> <p>16 Kelly Drye &amp; Warren LLP</p> <p>17 101 Park Avenue</p> <p>18 New York, New York 10178</p> <p>19 (212) 808-7609</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>8</p> <p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 On behalf of KMS New York Counties:</p> <p>4</p> <p>5 MICHAEL WINGET-HERNANDEZ, ESQUIRE</p> <p>6 Winget-Hernandez, LLC</p> <p>7 3112 Windsor Road, #228</p> <p>8 Austin, Texas 78703</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Also Present</p> <p>15 Videographer: Conway Barker</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p>7</p> <p>1 APPEARANCES: (CONTINUED)</p> <p>2</p> <p>3 On behalf of Roxane Laboratories and</p> <p>4 Boehringer-Ingelheim and affiliated entities:</p> <p>5</p> <p>6 JARED THOMAS HECK, ESQUIRE</p> <p>7 Kirkland &amp; Ellis LLP</p> <p>8 200 East Randolph Drive</p> <p>9 Chicago, Illinois 60601</p> <p>10 (312) 469-7087</p> <p>11</p> <p>12 On behalf of Baxter Healthcare Corporation:</p> <p>13</p> <p>14 TINA DUCHARME REYNOLDS, ESQUIRE</p> <p>15 Dickstein Shapiro LLP</p> <p>16 1825 Eye Street, N.W.</p> <p>17 Washington, D.C. 20006</p> <p>18 (202) 420-4114</p> <p>19</p> <p>20</p> <p>21</p> <p>22 (CONTINUED)</p>	<p>9</p> <p>1 C O N T E N T S</p> <p>2</p> <p>3 THE WITNESS: LISA PARKER PAGE</p> <p>4 Examination By Mr. Gabel..... 012</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit Abbott 226-Request for Production of</p> <p>12 Documents..... 022</p> <p>13 Exhibit Abbott 227-Abbott's Second set of</p> <p>14 production..... 023</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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<p style="text-align: right;">50</p> <p>1 collect documents?</p> <p>2 <b>A. For what?</b></p> <p>3 Q. Related to AWP matters?</p> <p>4 <b>A. I don't remember.</b></p> <p>5 Q. Do you recall receiving any</p> <p>6 instructions to preserve documents in 2003 or</p> <p>7 2004 in connection with AWP matters?</p> <p>8 <b>A. I don't remember.</b></p> <p>9 Q. What about prior to 2003/2004?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Have you received any instructions to</p> <p>12 preserve documents since 2004 relating to the AWP</p> <p>13 cases?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. When did you receive those</p> <p>16 instructions?</p> <p>17 <b>A. Maybe two or three months ago.</b></p> <p>18 Q. So in 2007?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Who sent those instructions to you?</p> <p>21 <b>A. Glenda would have sent them. Glenda</b></p> <p>22 <b>Bailey.</b></p>	<p style="text-align: right;">52</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. Do you have any recollection whatsoever</p> <p>3 about search or collection efforts of documents</p> <p>4 in 2004?</p> <p>5 <b>A. I don't.</b></p> <p>6 Q. The 2007 memo that you received from</p> <p>7 Glenda Bailey, do you know who the author of that</p> <p>8 memo was?</p> <p>9 <b>A. No. I don't remember.</b></p> <p>10 Q. How long was the memo?</p> <p>11 <b>A. Don't remember. It was pretty long.</b></p> <p>12 Q. Actually, I think --</p> <p>13 <b>A. It's the same one we already talked</b></p> <p>14 <b>about.</b></p> <p>15 Q. Gotcha. Do you know why you received</p> <p>16 the e-mailed memo from Glenda Bailey in early</p> <p>17 2007?--</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Why?</p> <p>20 <b>A. Because there was some litigation going</b></p> <p>21 <b>on, OGC needed some documents and we needed to</b></p> <p>22 <b>make sure that we had them and that we produced</b></p>
<p style="text-align: right;">51</p> <p>1 Q. Did she send you something by e-mail?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Was it a memo?</p> <p>4 <b>A. Yes. It was the same thing I was</b></p> <p>5 <b>talking about earlier.</b></p> <p>6 Q. Okay. And did that memo have</p> <p>7 instructions to preserve documents?</p> <p>8 <b>A. It would have, yes.</b></p> <p>9 Q. Do you understand which documents you</p> <p>10 were requested to preserve?</p> <p>11 <b>A. Well, I know which ones we are working</b></p> <p>12 <b>on, which documents we are working on pulling.</b></p> <p>13 Q. What about preserving documents; do you</p> <p>14 know which documents the instructions instructed</p> <p>15 you to preserve?</p> <p>16 <b>A. I don't remember which ones, but -- and</b></p> <p>17 <b>we --</b></p> <p>18 Q. You would look in the memo?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. So the best place to figure out the</p> <p>21 preservation efforts would be to look at the</p> <p>22 memo?</p>	<p style="text-align: right;">53</p> <p>1 <b>them.</b></p> <p>2 Q. Were you selected because you are in</p> <p>3 charge of records management --</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. -- for the regulations --</p> <p>6 <b>A. Development.</b></p> <p>7 Q. -- group?</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. You say that you have gone about</p> <p>10 collecting documents; correct?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. What's the volume of the documents that</p> <p>13 you've collected thus far?</p> <p>14 <b>A. Voluminous.</b></p> <p>15 Q. How have you gone about collecting</p> <p>16 these?</p> <p>17 <b>A. Well, my staff person is working with a</b></p> <p>18 <b>GC attorney who is requesting certain documents</b></p> <p>19 <b>related to regulations, and my staff person</b></p> <p>20 <b>requests that the documents be retrieved from the</b></p> <p>21 <b>federal record center and she delivers them to</b></p> <p>22 <b>the attorney for his review.</b></p>

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<p style="text-align: right;">54</p> <p>1 Q. Who is the attorney?</p> <p>2 A. Brian Kelly.</p> <p>3 Q. Brian Kelly?</p> <p>4 A. Kelly.</p> <p>5 Q. Okay. Have you asked employees within</p> <p>6 your group to search for documents?</p> <p>7 A. No. That wouldn't be standard</p> <p>8 procedure.</p> <p>9 Q. Is there any search being conducted</p> <p>10 aside from the search of documents that have been</p> <p>11 stored at the federal record center?</p> <p>12 A. Not that I know of.</p> <p>13 Q. And you say there have been voluminous</p> <p>14 documents retrieved from the federal record</p> <p>15 center; right?</p> <p>16 A. Yes.</p> <p>17 Q. Could you describe generally how many</p> <p>18 boxes?</p> <p>19 A. Maybe 50 or 60 boxes so far.</p> <p>20 Q. And how do you know which boxes to</p> <p>21 retrieve from the federal record center?</p> <p>22 A. When the attorney tells us what</p>	<p style="text-align: right;">56</p> <p>1 A. Rule-making records for regulations are</p> <p>2 permanent records.</p> <p>3 Q. All records relating to rule-making are</p> <p>4 permanent?</p> <p>5 A. It would be the rule-making record is</p> <p>6 permanent.</p> <p>7 Q. What do you mean by rule-making record?</p> <p>8 A. A rule-making record is defined in our</p> <p>9 record schedule, and it consists of a copy of the</p> <p>10 published regulation, all public comments</p> <p>11 submitted on the regulation, any other</p> <p>12 publications related to a regulation, such as a</p> <p>13 correction notice or an extension of comment</p> <p>14 period, and any information that the agency</p> <p>15 relied on in making its policy, such as studies</p> <p>16 that may have been cited in the regulation or</p> <p>17 reports or something like that.</p> <p>18 Q. Is it fair to say that the rule-making</p> <p>19 records as you've described them all deal with</p> <p>20 public documents?</p> <p>21 A. I don't understand your question.</p> <p>22 Q. The rule-making records that you've</p>
<p style="text-align: right;">55</p> <p>1 regulation he would like to review, we look in</p> <p>2 the database and the database tells us by</p> <p>3 regulation which boxes that regulation is in in</p> <p>4 the record center.</p> <p>5 Q. So the attorney will specify a</p> <p>6 regulation, you'll go to the database, determine</p> <p>7 where it is, if it still exists, and then track</p> <p>8 it back down from the federal records center?</p> <p>9 A. Yes.</p> <p>10 MS. MARTINEZ: Objection to form. You</p> <p>11 can answer. It just was objecting to form.</p> <p>12 MR. GABEL: She just didn't like my</p> <p>13 question.</p> <p>14 A. The records are permanent records, so</p> <p>15 they will exist.</p> <p>16 MS. MARTINEZ: That was the nature of</p> <p>17 my objection. There had been nothing on the</p> <p>18 record to say that they wouldn't exist.</p> <p>19 A. Right. They are permanent records, so</p> <p>20 they are there.</p> <p>21 Q. Okay. Which records are permanent</p> <p>22 records?</p>	<p style="text-align: right;">57</p> <p>1 just described, were those all public documents</p> <p>2 at the time the regulations were proposed and</p> <p>3 eventually published?</p> <p>4 A. And by public you mean that we would –</p> <p>5 what do you mean by public documents?</p> <p>6 Q. The public comments?</p> <p>7 A. Yes.</p> <p>8 Q. Things available to the general public</p> <p>9 as opposed to internal discussions within CMS.</p> <p>10 A. Ask me one more time.</p> <p>11 Q. Would the rule-making records include</p> <p>12 solely documents that were available to the</p> <p>13 public during the process of the regulation being</p> <p>14 implemented or proposed or does it also include</p> <p>15 internal documents within CMS?</p> <p>16 A. That depends on the time of when the</p> <p>17 document was shipped to the record center.</p> <p>18 Because in 2004 we obtained approval to change</p> <p>19 our record schedule. So before 2004 we included</p> <p>20 all – we included everything, internal documents</p> <p>21 as well as public documents, in what we shipped</p> <p>22 to the record center.</p>

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<p style="text-align: right;">58</p> <p>1       <b>After 2004 we obtained approval through</b>  2 <b>the national archives to change our record</b>  3 <b>schedule so that the rule-making record only</b>  4 <b>consists of those things that I previously</b>  5 <b>mentioned and does not consist of any internal</b>  6 <b>documents.</b>  7       Q. For the documents that prior to 2004  8 had been shipped to the federal record center,  9 did you go back and parse through what was public  10 and internal?  11       <b>A. We can't do that.</b>  12       Q. So if it's at the federal record  13 center, it's there in whatever form you sent it  14 to them?  15       <b>A. Correct. Yes.</b>  16       Q. Is it a difficult process to request  17 documents from the federal record center?  18       <b>A. No.</b>  19       Q. After you request documents, how long  20 does it take for you to get them back from the  21 federal record center?  22       <b>A. About a week on average. Five working</b></p>	<p style="text-align: right;">60</p> <p>1 specifically request being done in your group?  2       <b>A. Well, I mean the general procedure</b>  3 <b>would be that I would get a memo from Glenda, I</b>  4 <b>would review it to see which regulations are</b>  5 <b>needed, and then we would work in consultation</b>  6 <b>with the general counsel to pull together rule-</b>  7 <b>making records or whatever documents they read.</b>  8       Q. Does the memo from Glenda Bailey set  9 forth the actual regulations themselves that you  10 are supposed to look for?  11       <b>A. Yes. Those memos usually contain a</b>  12 <b>list, usually prepared by the outside party, of</b>  13 <b>what things they would like to have.</b>  14       Q. Which regulations have you been asked  15 to look for?  16       <b>A. Right now we are working on two</b>  17 <b>physician fee schedule regulations. One was</b>  18 <b>published I think in '92, and that's the one with</b>  19 <b>many boxes. And one was published I believe in</b>  20 <b>'98.</b>  21       Q. Any other regulations that you have  22 been asked to retrieve boxes for?</p>
<p style="text-align: right;">59</p> <p>1 <b>days.</b>  2       Q. And the 50 or 60 boxes that you  3 collected, do you know if those have been turned  4 over to defendants in this case?  5       <b>A. I don't know.</b>  6       Q. Where are those 50 or 60 boxes?  7       <b>A. Some of them are being stored at OGC</b>  8 <b>and I believe some of them are being stored in</b>  9 <b>our warehouse.</b>  10       Q. Do you know what's going to happen to  11 those 50 or 60 boxes?  12       <b>A. I do understand from Brian Kelly that</b>  13 <b>an outside attorney is supposed to be coming to</b>  14 <b>review some of the boxes.</b>  15       Q. By outside attorney do you mean someone  16 outside of the government or outside of CMS?  17       <b>A. I think outside of the government.</b>  18       Q. With respect to the search that is  19 currently being done, are there any other  20 measures besides looking at the regulations that  21 the attorneys request -- looking for documents  22 pertaining to the regulations that the attorneys</p>	<p style="text-align: right;">61</p> <p>1       <b>A. In this case I know those are the ones</b>  2 <b>we are currently working on and I'm not sure if</b>  3 <b>that was the whole list or if there are more or</b>  4 <b>what.</b>  5       Q. No other ones that you can recall  6 though as of right now?  7       <b>A. Not right now. But I will say that</b>  8 <b>sometimes we do it in stages because we don't</b>  9 <b>have the space to hold. So it could be we are</b>  10 <b>trying to work through these, look at these, and</b>  11 <b>then move on to the next few.</b>  12       Q. Do you know the specific citation to  13 the regulations?  14       <b>A. No.</b>  15       Q. When you say the physician fee schedule  16 regulation from 1992, was that when -- 1992, was  17 that when the regulation was proposed?  18       <b>A. It would have been proposed and</b>  19 <b>finalized I think in the same year. And that's</b>  20 <b>an annual publication.</b>  21       Q. In collecting any of these documents  22 have you reviewed them for privilege?</p>



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17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 <b>A. I don't do that.</b></p> <p>2 Q. Do you know of any CMS employees who</p> <p>3 have been involved in determining whether</p> <p>4 documents are privileged under the due process</p> <p>5 privilege?</p> <p>6 MS. MARTINEZ: Objection to form, but</p> <p>7 only because you said due process.</p> <p>8 Q. Sorry. I made that mistake already</p> <p>9 once today. Do you know of any CMS employees who</p> <p>10 have been involved in determining if documents</p> <p>11 were privileged under the deliberative process</p> <p>12 privilege?</p> <p>13 <b>A. I don't.</b></p> <p>14 Q. What steps have you taken to preserve</p> <p>15 documents since you received the notice in early</p> <p>16 2007?</p> <p>17 <b>A. We preserve all documents in accordance</b></p> <p>18 <b>with your record schedule and documents are only</b></p> <p>19 <b>disposed of if I give the okay that they are</b></p> <p>20 <b>expired and we don't need them for anything else.</b></p> <p>21 <b>And we haven't disposed of any records at all.</b></p> <p>22 Q. In 2007?</p>	<p style="text-align: right;">64</p> <p>1 the documents are scheduled for destruction, have</p> <p>2 you ever --</p> <p>3 MS. MARTINEZ: Object to form.</p> <p>4 Q. Who sends you the notice that documents</p> <p>5 are scheduled for destruction?</p> <p>6 <b>A. I have never received such a notice.</b></p> <p>7 Q. Maybe I misunderstood your testimony.</p> <p>8 <b>A. Right. I was explaining what the</b></p> <p>9 <b>process would be. But I'm saying that we are not</b></p> <p>10 <b>there yet. We haven't destroyed any records.</b></p> <p>11 <b>And, furthermore, any documents that go to the</b></p> <p>12 <b>federal record center are permanent records, so</b></p> <p>13 <b>they would never be destroyed. After they are</b></p> <p>14 <b>maintained at the federal record center for 20</b></p> <p>15 <b>years, then they go to the national archives.</b></p> <p>16 Q. That's for all records that come out of</p> <p>17 --</p> <p>18 <b>A. For permanent records.</b></p> <p>19 Q. For permanent records only. If they</p> <p>20 are not permanent records though they have a</p> <p>21 different --</p> <p>22 <b>A. Yes.</b></p>
<p style="text-align: right;">63</p> <p>1 <b>A. At all. We are working toward getting</b></p> <p>2 <b>there, but we haven't destroyed any records.</b></p> <p>3 Q. So for what time period have you not</p> <p>4 destroyed --</p> <p>5 <b>A. Well, with regard to regulations files,</b></p> <p>6 <b>we have not yet instituted our process of</b></p> <p>7 <b>disposal of records. So any regulations files</b></p> <p>8 <b>that we acquired and maintained, we still have</b></p> <p>9 <b>them.</b></p> <p>10 Q. If the document retention schedule for</p> <p>11 CMS calls for the destruction, would you expect</p> <p>12 them to be destroyed pursuant to that policy?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So they could have been destroyed?</p> <p>15 <b>A. No. No the CMS records officer would</b></p> <p>16 <b>send me a form saying, you know, these are up for</b></p> <p>17 <b>disposal or destruction, whatever, and then I</b></p> <p>18 <b>would compare that against anything that I have</b></p> <p>19 <b>saying that these need to be protected or held</b></p> <p>20 <b>out, and so they wouldn't be disposed of.</b></p> <p>21 Q. Okay. Have you in response to the</p> <p>22 federal record center sending you a notice that</p>	<p style="text-align: right;">65</p> <p>1 Q. -- production or retention?</p> <p>2 <b>A. Retention, yes. That's correct.</b></p> <p>3 Q. Schedule. So you have only been</p> <p>4 talking about permanent records with respect to</p> <p>5 the non-destruction of documents?</p> <p>6 <b>A. I'm saying that we never destroy any</b></p> <p>7 <b>documents, temporary or otherwise.</b></p> <p>8 Q. Okay. And is that according to a</p> <p>9 written policy of CMS?</p> <p>10 <b>A. Well, as I was trying to explain, in</b></p> <p>11 <b>2004 when we changed our record schedule, we</b></p> <p>12 <b>provided for a shorter retention period for</b></p> <p>13 <b>temporary records. And we are not yet to the</b></p> <p>14 <b>place in the process or we haven't yet developed,</b></p> <p>15 <b>we haven't started destroying temporary records</b></p> <p>16 <b>yet.</b></p> <p>17 Q. So although the policy calls for the</p> <p>18 destruction, you haven't destroyed any?</p> <p>19 <b>A. Right. Not yet. Not yet. And if --</b></p> <p>20 <b>when we get there, if there are any that need to</b></p> <p>21 <b>be preserved under a preservation order, then I</b></p> <p>22 <b>would ensure that they were preserved.</b></p>



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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 Q. Hopefully, this will narrow it down for</p> <p>2 us.</p> <p>3 <b>A. Okay.</b></p> <p>4 Q. Specifically, if you would look at</p> <p>5 HHC015-0727. And that appears to be HCFA's</p> <p>6 comprehensive records schedule and it's dated May</p> <p>7 12, 1998.</p> <p>8 <b>A. Okay.</b></p> <p>9 Q. Then if you could turn in to document</p> <p>10 or page number HHS015-0732.</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. Have you seen this page before?</p> <p>13 <b>A. No. So I'm confused. Is this a cover</b></p> <p>14 <b>memo, attachments or different --</b></p> <p>15 Q. I think it's a number of documents</p> <p>16 grouped together.</p> <p>17 <b>A. Okay.</b></p> <p>18 Q. Instead of a single larger document.</p> <p>19 <b>A. Okay. Okay. They look the same.</b></p> <p>20 Q. I think it's identical.</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. Is this consistent with your</p>	<p style="text-align: right;">84</p> <p>1 Q. Okay. Now for documents that were sent</p> <p>2 to the federal record center prior to your time</p> <p>3 as the records manager for your department, can</p> <p>4 you testify as to whether those documents were</p> <p>5 preserved or whether they were in fact destroyed</p> <p>6 under the policy that we have in front of us?</p> <p>7 <b>A. I believe that they were preserved,</b></p> <p>8 <b>because when we called them back they are there</b></p> <p>9 <b>and we get many requests. So.</b></p> <p>10 Q. Okay.</p> <p>11 <b>A. So I believe they were preserved, but I</b></p> <p>12 <b>think that the records officer could tell you if</b></p> <p>13 <b>anything was destroyed.</b></p> <p>14 Q. So you are not aware one way or the</p> <p>15 other whether destruction occurred? You can only</p> <p>16 testify as to what you request today and what</p> <p>17 happens to still be there from the time before</p> <p>18 you became the records manager?</p> <p>19 <b>A. Correct. Correct. And I don't recall</b></p> <p>20 <b>anything ever being destroyed. So.</b></p> <p>21 Q. So am I correct to say that you -- any</p> <p>22 documents that you have requested from the</p>
<p style="text-align: right;">83</p> <p>1 understanding of what the document retention</p> <p>2 schedule was as of May 12, 1998?</p> <p>3 <b>A. I really can't speak on that. I wasn't</b></p> <p>4 <b>working on records management then.</b></p> <p>5 Q. Do you know what the record schedule</p> <p>6 was prior to 1998?</p> <p>7 <b>A. No.</b></p> <p>8 Q. How do you know then that there was a</p> <p>9 schedule that called for the intermingling of the</p> <p>10 rule-making record and the rule-making support</p> <p>11 file?</p> <p>12 <b>A. I know when I started working with</b></p> <p>13 <b>records sometime in 2004, I know how they were</b></p> <p>14 <b>being packed and shipped at that time. And at</b></p> <p>15 <b>that time we were sending everything, including</b></p> <p>16 <b>the support file and the public comments, maybe</b></p> <p>17 <b>in separate boxes, comments in one box and</b></p> <p>18 <b>support file in another, but everything was going</b></p> <p>19 <b>to the federal record center. And then I worked</b></p> <p>20 <b>on an initiative to only send things to the</b></p> <p>21 <b>record center that would be in the rule-making</b></p> <p>22 <b>record.</b></p>	<p style="text-align: right;">85</p> <p>1 federal record center in connection with the AWP</p> <p>2 cases have been there?</p> <p>3 <b>A. For the most part, yeah. I would say</b></p> <p>4 <b>yes.</b></p> <p>5 Q. For the most part. Are there any that</p> <p>6 you have requested that haven't been there?</p> <p>7 <b>A. I mean there is none that I can recall</b></p> <p>8 <b>that we don't have. But I don't want to say yes,</b></p> <p>9 <b>we have everything, because there is always a</b></p> <p>10 <b>possibility that for some reason one little piece</b></p> <p>11 <b>of paper or something, you know, we might not be</b></p> <p>12 <b>able to find in the 20 years and thousands of</b></p> <p>13 <b>boxes that we send over there. So I want to be</b></p> <p>14 <b>clear that we are pulling stuff back and it</b></p> <p>15 <b>appears to be there, so.</b></p> <p>16 Q. And with the passage of time there is</p> <p>17 more of a likelihood that documents could be</p> <p>18 misplaced?</p> <p>19 <b>A. No.</b></p> <p>20 MS. MARTINEZ: Objection as to form.</p> <p>21 You can answer.</p> <p>22 <b>A. I keep forgetting. No. It's not the</b></p>

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 passage of time. Once something is at the</p> <p>2 records center it's there and it's with the</p> <p>3 archive. So if we send it over there, it's</p> <p>4 preserved. It's in the packing did a folder get</p> <p>5 missed; when we are packing boxes did a folder</p> <p>6 get missed or did something inadvertently get</p> <p>7 left out, which is not a frequent occurrence,</p> <p>8 it's very rare. But there are some cases where a</p> <p>9 folder is missing from a box or we can't find a</p> <p>10 specific document.</p> <p>11 Q. So are you telling me that the record</p> <p>12 retention policy that we've seen in Exhibit</p> <p>13 Abbott 073 as well as Exhibit Abbott 072, to your</p> <p>14 knowledge, was not followed by your department?</p> <p>15 MS. MARTINEZ: Objection as to --</p> <p>16 Q. -- prior to -- prior to you becoming</p> <p>17 the records manager for your department?</p> <p>18 MS. MARTINEZ: Objection as to form,</p> <p>19 and only because you asked about the entire</p> <p>20 Exhibit Abbott 072 or Exhibit Abbott 073, and --</p> <p>21 Q. With respect to just the sections N and</p> <p>22 O regarding the rule-making record and the rule-</p>	<p style="text-align: right;">88</p> <p>1 support files that have been destroyed?</p> <p>2 A. No, I'm not.</p> <p>3 Q. So to the extent this policy still</p> <p>4 applied -- applied from 2004 until it was changed</p> <p>5 in 2006, it would not have been followed?</p> <p>6 A. That's what it seems like, yes.</p> <p>7 Q. And you don't know one way or another</p> <p>8 whether it was followed prior to you becoming the</p> <p>9 records manager?</p> <p>10 A. Well, what I'm saying, I don't know</p> <p>11 definitively whether or not it was followed, but</p> <p>12 because I'm responsible for calling back</p> <p>13 information, it doesn't appear that it was</p> <p>14 followed. It doesn't appear that anything was</p> <p>15 destroyed.</p> <p>16 Q. Okay. So if the defendants in this</p> <p>17 case wanted any documents related to previously</p> <p>18 published regulations or proposed regulations,</p> <p>19 those documents should be able to be retrieved</p> <p>20 from the federal record center?</p> <p>21 A. Yes, I believe so.</p> <p>22 Q. And it typically takes you</p>
<p style="text-align: right;">87</p> <p>1 making support file?</p> <p>2 MS. MARTINEZ: And I object as form. I</p> <p>3 think you probably meant to only ask about O.</p> <p>4 BY MR. GABEL:</p> <p>5 Q. Let me restate the entire thing. Do</p> <p>6 you know one way or another whether Section O on</p> <p>7 the rule-making support file and the section</p> <p>8 specifically that talks about the disposition of</p> <p>9 the rule-making support file resulted in the</p> <p>10 destruction of any rule-making support files</p> <p>11 prior to you becoming the records manager for</p> <p>12 your department?</p> <p>13 A. I don't know for sure.</p> <p>14 Q. Since you've become the record manager,</p> <p>15 which you became in 2004; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. What month in 2004?</p> <p>18 A. The spring sometime.</p> <p>19 Q. Sometime in the spring?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Since you became records manager in</p> <p>22 spring of 2004, are you aware of any rule-making</p>	<p style="text-align: right;">89</p> <p>1 approximately a week to receive the documents</p> <p>2 back from the federal record center?</p> <p>3 A. Correct.</p> <p>4 Q. Have any litigation holds that you've</p> <p>5 seen or preservation instructions instructed you</p> <p>6 specifically to refrain from destroying rule-</p> <p>7 making support files?</p> <p>8 A. I believe that those preservation memos</p> <p>9 say that any documents related to thus and so</p> <p>10 regulation should be preserved, so we would</p> <p>11 preserve the public file as well as the internal</p> <p>12 work as well.</p> <p>13 Q. And which regulations have you been</p> <p>14 instructed to preserve documents on?</p> <p>15 A. Well, I know those two that we are</p> <p>16 working on, and I don't recall any others, but to</p> <p>17 the extent they are in the memo, I refer to the</p> <p>18 memo.</p> <p>19 Q. For the 1998 regulation that you've</p> <p>20 requested documents from the federal records</p> <p>21 center on, does the reference number HCFA-1006-FC</p> <p>22 refresh your recollection at all?</p>